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GARY W. LAMPKINS
1501 ARAGONA BLVD.
FORT WASHINGTON MD 20744

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SEP 29 2005

OFFICE OF PETITIONS

In re Application of :
Gary W. Lampkins : DECISION ON PETITION
Application No. 10/046,164 :
Filed: 16 January, 2002 :
For: STAY TIE II :

This is a decision on the petition filed on 24 August, 2005, which is treated as a petition under 37 CFR 1.137(b)¹ to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). Grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned on 16 October, 2003, for failure to file a proper reply to the Notice of Non-Compliant Amendment (37 CFR 1.121), mailed on 15 August, 2003, which set a one (1) month shortened period for reply. On 15 September, 2003, petitioner filed an amendment. However, the examiner determined by letter mailed on 8 October, 2003, that the amendment was not compliant with 37 CFR 1.121(c), and stated that the time for reply continued to run from the Notice mailed on 15 August, 2003. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 16 April, 2004.

The petition lacks the required reply. In this regard, the examiner has determined that the amendment filed with the present petition on 24 August, 2005 does not comply with the Notice of Non-Compliant amendment mailed on 8 October, 2003. Specifically, applicant is required to have a status identifier with each claim. Only canceled claims can be written in a group, such as Claims 1-3 (canceled). Other claims, such as new claims, require the status identifier to be located in the first line of the claim after the claim number. It is also unclear whether claims 1-2 are canceled or amended as it appears to be both in the submission. Further, not only is the amendment non-compliant, it also continues to be non-responsive as applicant has failed to discuss how each of the new claims read over the prior art applied as required by 37 CFR 1.111. Applicant has also failed to correct all the problems point out in the Notice of Non-Compliance, including those noted above.

An amendment in compliance with 37 CFR 1.121, as stated in the Notice mailed on 15 August, 2003, is required with any renewed petition.

Additionally, the petition lacks a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. In this regard, it is suggested that petitioner utilize the attached form when filing a renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

ATTCH: Form PTO/SB/64